

1 MR. PEREZ-MARQUES: We have no
2 objection to showing this to the witness.

3 MR. SCHMIDT: If I may just pass
4 this to the witness. The only question I am
5 going to ask the witness is if this refreshes
6 your recollection of when --

7 JUDGE SIPPEL: Let me just see it.
8 I haven't seen it at all. Okay. This is
9 entitled "NFL Network Blind-Sided by Comcast."
10 And this is dated, what, September 25, 2006.
11 And it is published by who? Multi-Channel
12 News? You can show it to the witness as you
13 see fit.

14 MR. SCHMIDT: Thank you.

15 BY MR. SCHMIDT:

16 Q Take a look at this, and let me
17 know if that refreshes your recollection as to
18 when news leaked of Comcast's decision to tier
19 the NFL Network.

20 A Yes.

21 Q And that was before the date of
22 Exhibit 506, wasn't it?

1 A Yes.

2 Q Let me ask you to put Exhibit 527
3 in front of you. Let me know when you have
4 it.

5 A I do.

6 Q There was a reference to [REDACTED]
7 commenting on the CPM, correct?

8 A Yes.

9 Q What I would like to refer you to
10 is paragraph 16 of your written direct
11 testimony. Do you have that in front of you,
12 sir?

13 A I do.

14 Q Do you see a reference here to
15 advertisers seeking reductions in the CPM when
16 distribution goes down?

17 A Yes.

18 Q Can you explain to the Court what
19 that means?

20 A Many advertisers will further
21 discount their value for your viewers, which
22 is CPM, which is cost per thousand, for the

1 most part the cost for reaching a thousand
2 viewers. Based upon the distribution or
3 footprint of the network, it is a calculation
4 they do that they often don't share with the
5 seller, because it is part of their internal
6 metrics as to how they value that particular
7 network.

8 Q In your experience, do advertisers
9 sometimes push back on the CPM as distribution
10 goes down?

11 A It is one of the ongoing and
12 present points of any media negotiation. The
13 value of the CPM and the negotiating and push
14 and pull of that is constant.

15 Q Let me ask you one other question.
16 There was a suggestion in one of the questions
17 to you that you hadn't addressed in your
18 written direct testimony that the NFL Network
19 had actually had some success in advertising
20 after the date of Comcast's tiering. And what
21 I would like to ask you to do is look at the
22 second sentence of paragraph 18 and tell me if

1 that addresses precisely that situation.

2 JUDGE SIPPEL: Paragraph 18 of

3 what? Of the --

4 MR. SCHMIDT: Written direct.

5 JUDGE SIPPEL: -- written direct?

6 MR. SCHMIDT: Yes, sir.

7 JUDGE SIPPEL: Thank you.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Let me see. Wait a
10 minute, wait a minute. I'm trying to find it

11 now. Okay. Do you want to clarify that?

12 Now, how does your question tie in with this
13 paragraph? Why don't --

14 BY MR. SCHMIDT:

15 Q Do you mind reading the second
16 sentence of the paragraph?

17 JUDGE SIPPEL: Thank you.

18 THE WITNESS: "Through our
19 efforts, we have been able to grow our overall
20 advertising revenues, but our ability to do
21 this has been impaired by Comcast's reduction
22 of our subscriber base."

1 BY MR. SCHMIDT:

2 Q Am I right in understanding that
3 that sentence refers to success the NFL
4 Network has had through your efforts and
5 through your teammates' efforts,
6 notwithstanding Comcast's tiering decision?

7 A Yes.

8 Q Am I also right in understanding
9 that you believe the success would be even
10 greater absent the tiering?

11 A Yes, it would.

12 Q Do you see a reference --

13 JUDGE SIPPEL: Be careful now.

14 You are leading this witness something fierce.

15 (Laughter.)

16 MR. CARROLL: Your Honor, I was
17 really stifling that.

18 BY MR. SCHMIDT:

19 Q Let me ask you to read the last
20 sentence or the full sentence of paragraph 17.

21 A "After Comcast dropped the NFL
22 Network from its second most widely-penetrated

1 level of digital service known as D2, and
2 instead placed it on a premium sports tier,
3 the NFL Network very conspicuously experienced
4 a significant reduction in its Comcast
5 subscribership of above [REDACTED]

6 Q Do you believe that reduction
7 impacted the NFL Network's ability to secure
8 advertising?

9 A It did. There were -- the Comcast
10 decision and its relationship with the NFL
11 Network was widely known and very public. And
12 at the time, approximately at the end of this
13 season, or I should say the beginning of the
14 football season, and in through our
15 programming in 2008, that was a constant
16 discussion point with many advertisers,
17 because it -- Comcast being the largest cable
18 distributor helps set marketplace perceptions.
19 I mean, they have that ability, so people will
20 focus on that.

21 And many advertisers talked about
22 distribution in general for the NFL Network,

1 because for us the trend lines had been going
2 up. We had had positive trend from the 2006
3 season when I joined the NFL.

4 Q Are any of the views you just
5 expressed in that answer affected by any of
6 the documents you have been shown today?

7 A No.

8 MR. SCHMIDT: Thank you. Nothing
9 further.

10 JUDGE SIPPEL: Now, this is the --
11 okay. This is -- in paragraph 17, you are
12 talking about the period, okay, known as D2,
13 that means that is the end of 2006, is that
14 right, going forward? Is that the timeframe
15 that this relates to?

16 THE WITNESS: I believe it's the
17 end of 2006 into 2007.

18 JUDGE SIPPEL: Correct. Okay.
19 Just for my understanding. I appreciate that.

20 All right. Is there any -- is
21 that it, Mr. Schmidt?

22 MR. SCHMIDT: Yes, sir.

1 JUDGE SIPPEL: Is that it?

2 MR. SCHMIDT: That's it for me,

3 Your Honor.

4 JUDGE SIPPEL: Any recross on

5 that?

6 MR. PEREZ-MARQUES: Just a couple

7 of questions, Your Honor, if I may.

8 JUDGE SIPPEL: Go ahead.

9 RECROSS EXAMINATION

10 BY MR. PEREZ-MARQUES:

11 Q Now, looking at Exhibit 506, Mr.

12 Schmidt was just asking you whether Comcast

13 had already -- news of Comcast's intention to

14 tier had already been made public. Do you

15 recall that testimony?

16 A Yes.

17 Q Now, in fact, Comcast was not able

18 to tier the NFL Network because before it

19 could the NFL sued Comcast, isn't that right?

20 MR. SCHMIDT: Objection, Your

21 Honor. Outside the scope of my cross or the

22 direct.

1 JUDGE SIPPEL: Well, you opened
2 the door. I'm going to let him go on cross.
3 Go ahead. I'll overrule the objection.

4 THE WITNESS: I don't recall the
5 date that the NFL may have sued Comcast.

6 BY MR. PEREZ-MARQUES:

7 Q You do recall that the NFL sued
8 Comcast, correct?

9 A I do, yes.

10 Q To prevent it from exercising its
11 hearing right.

12 A Yes.

13 Q And, in fact, because of that
14 lawsuit, Comcast continued carrying the NFL
15 Network on D2, isn't that right?

16 A Yes.

17 Q Exhibit 506 says nothing about
18 Comcast tiering, does it?

19 A Example -- sorry, the document
20 506, which is what you are asking me to,
21 doesn't say anything about tiering. It asks
22 the question of the differences between D2 and

1 D1 relative to that.

2 Q Relative to the sports here?

3 Where do you see that, Mr. Furman?

4 A No, no, no. It asks -- it asks
5 the question of the difference between D1 and
6 D2.

7 Q It says nothing about sports here.

8 A No, it does not.

9 Q Now, you just testified on
10 redirect by Mr. Schmidt that the -- you
11 believe that Comcast's distribution decision
12 impacted the NFL's ad revenue, isn't that what
13 you just testified?

14 A Yes.

15 Q But it wasn't only Comcast's
16 distribution decision that impacted the NFL's
17 ad revenue.

18 A No.

19 Q And you made no effort to quantify
20 the impact of any other effects.

21 A No.

22 MR. PEREZ-MARQUES: No more

1 questions.

2 MR. SCHMIDT: Nothing, Your Honor.

3 Thank you.

4 JUDGE SIPPEL: Mr. Schonman, you
5 wanted to ask a question?

6 MR. SCHONMAN: Thank you, Your
7 Honor.

8 BY MR. SCHONMAN:

9 Q Just a few questions, Mr. Furman.
10 My name is Gary Schonman, and I am co-counsel
11 for the Enforcement Bureau. I would like to
12 direct your attention to your direct written
13 testimony, which is Enterprise Exhibit 194,
14 specifically paragraph 17. You were just
15 looking at that a moment ago.

16 A Yes.

17 Q And you said in your direct
18 written testimony here that after the NFL
19 Network was moved to -- moved from its D2 tier
20 it experienced a significant reduction in its
21 Comcast subscribership of about [REDACTED]
22 Do you have any knowledge as to what extent

1 advertising revenues dropped as a result --
2 direct result of that change?

3 A Not specifically.

4 Q Generally?

5 A Generally, in that period of time,
6 our advertising revenues increased.

7 Q During what period of time are we
8 talking about here?

9 A The period of time from the change
10 from D1 and D2 to the tiering. We were able
11 to bring in new advertisers throughout the
12 entire year.

13 Q So although subscribership
14 suffered as a result of the move to a premium
15 tier, advertising revenues did not?

16 A They did not in this particular
17 case.

18 Q What do you mean "in this
19 particular case"?

20 A In the period of this period of
21 time, we were able to bring in new
22 advertisers, so at that -- and I am looking at

1 what I assume to be a full year in that period
2 of time. We were able to bring in new
3 advertisers, which increased our revenue.

4 Q Is it fair to say that advertising
5 revenues did not suffer, that is did not go
6 down, following the move to the premium tier?

7 A I general, they did not suffer.

8 Q And, in fact, they went up?

9 A Yes.

10 Q Okay. Let me direct your
11 attention to the next paragraph, paragraph 18
12 of your direct written testimony.

13 A Yes.

14 Q And you have -- about halfway
15 through that you say, "To provide a specific
16 example, [REDACTED] notified the
17 NFL Network that it would not renew its long-
18 term contract because of the decline in the
19 NFL Network subscribership." What is your
20 basis for attributing [REDACTED] notification to
21 the NFL -- strike that. What is your basis
22 for believing that [REDACTED] notification was

1 based on the decline in subscribership?

2 A We had had discussions through and
3 with [REDACTED] either directly with the [REDACTED]
4 folks and/or their advertising agencies,
5 talking about the third year, which it would
6 have been, of their renewal of that particular
7 property.

8 And they talked about the fact
9 that we had had severe distribution challenges
10 that had occurred throughout this period of
11 time, and they didn't feel that the upward
12 trend was continuing, and, in fact, that we
13 were going to be declining in our footprint,
14 in our distribution.

15 Q When you say "they didn't feel,"
16 did they say that, or that's what you were
17 deriving from your conversation?

18 A No. They indicated that
19 distribution and the change in our trend and
20 our decline was a key consideration in their
21 decision.

22 Q To your knowledge, was there any

1 other reason? We have discussed a lot this
2 afternoon about various reasons why the NFL
3 Network might lose advertising revenues or
4 lose advertisers. To your knowledge, was
5 there any other reason why [REDACTED] would have
6 notified the NFL Network that it would not
7 renew its contract?

8 A No.

9 Q So you stand by the statement that
10 the sole reason was because of the move to the
11 premium tier?

12 A I stand by that in this specific
13 example, the most important reason that they
14 have indicated to us. And I am sure there
15 were other things that they were looking at.
16 I'm not particularly knowledgeable on all of
17 the metrics they have, but this is the one
18 that they relayed to us was the reason that
19 they were not renewing their contract.

20 Q Let's move on to paragraph 19.

21 A Yes.

22 Q And you indicate that the [REDACTED]

1 [REDACTED] was one of the advertisers --
2 I'm sorry, [REDACTED] and [REDACTED] excluded the NFL
3 Network as a competitor for national
4 advertising contracts. And, again, you
5 attribute it to because of its reduced
6 nationwide distribution. Do you have any
7 knowledge as to whether there were any other
8 reasons that they declined to do business with
9 the NFL?

10 A I do not.

11 Q What is your basis for attributing
12 it to the decline in nationwide distribution?

13 A With specifics to [REDACTED]
14 [REDACTED] as I talked about earlier,
15 advertisers -- many advertisers use that
16 approximate 50 million benchmark as a loose
17 benchmark for how they determine that they are
18 going to be involved in advertising. [REDACTED]
19 [REDACTED] was very carefully watching the
20 upward trends of the NFL Network and was
21 discussing with our representatives the
22 ability to come in and start to do advertising

1 with the NFL Network.

2 They liked the programming about
3 -- of football, they support it on other
4 networks, and they wanted to be able to get in
5 on that as we continued our rise.

6 At the moment, or in the period I
7 should say, of us negotiating that, the up-
8 front selling period, which takes place in and
9 around April through September of any given
10 year, the distribution issues were very much
11 in the press and caused the [REDACTED] folks to tell
12 us that they were not going to consider us at
13 this point because of the unsure nature of
14 distribution for the NFL Network.

15 Q Are you assuming that, or is that
16 something that you learned directly from the
17 [REDACTED] companies?

18 A That was something we learned
19 directly from the [REDACTED] company.

20 Q And what exactly did you learn
21 from them directly?

22 A That the changes in our

1 distribution growth and the unsure nature of
2 where our distribution was going to be with
3 this particular issue in Comcast had caused
4 them to put on hold any thoughts about using
5 the NFL Network for their advertising.

6 Q Do you have any personal knowledge
7 as to any other reasons why the [REDACTED]
8 companies might have excluded the NFL Network
9 for national advertising contract?

10 A At that particular time?

11 Q Correct.

12 A No.

13 Q Further in paragraph 19,
14 essentially you say the same thing regarding
15 [REDACTED] that they reduced advertising
16 expenditures, again attributing it due to
17 increased penetration. What is that based on?

18 A That is based on [REDACTED] telling
19 us, through their advertising agency in
20 Chicago, that distribution was a key element
21 in their decisionmaking process.

22 Q Did they tell you personally?

1 A They told us through -- no, they
2 told me -- I received that information through
3 our sales representative in Chicago.

4 Q Do you have any knowledge as to
5 whether there were any other reasons expressed
6 for [REDACTED] reducing its advertising
7 expenditures?

8 A No.

9 Q Earlier in your cross examination
10 a question was asked, and it was unclear to me
11 what the question was, although you responded
12 in the affirmative. And I need -- I would
13 like to just flesh it out a bit. I believe
14 the question was: is it significant that you
15 sell in areas where media buyers are located?
16 Is that a -- do you recall that question?

17 A I do.

18 Q And you responded yes. And
19 explain to me why it is significant that you
20 sell in areas where media buyers are located.

21 A The way I understood the question
22 is that if a -- if a group of media buyers

1 reside in an area and are unable to sample on
2 a daily basis the programming of the NFL
3 Network, because it may not be carried on a
4 particular cable system, we have to work twice
5 as hard to get them to understand the
6 programming.

7 If they are able to see Sports
8 Center, they understand what it is. Our news
9 and information show, we believe, has
10 wonderful traction and does good ratings, but
11 people don't understand that Total Access has
12 that ability, which happens to be the name of
13 the show.

14 So we have to work twice as hard
15 by getting them out into areas, posting them
16 at places, either at our offices or places
17 where we have access to DirectTV, but really
18 getting them familiar with the programming, so
19 they know what they are investing their
20 clients' money in. They like to have an
21 ability to talk about what the programming is
22 when asked.

1 Q Just so I understand, what exactly
2 is a media buyer?

3 A Media buyer is an individual that
4 is hired by the client that usually resides at
5 an advertising agency, whose sole
6 responsibility or primary responsibility is to
7 negotiate the value of the 30-second
8 commercials that the client will run. So they
9 will sit down and work with our sales team to
10 determine what the value is of the commercial,
11 and it is a negotiation.

12 Q Middlemen?

13 A Yes.

14 Q Okay. Could you turn to Comcast
15 Exhibit 506, please? That is a two-page
16 document with an e-mail string.

17 A Yes.

18 Q Do you have it?

19 A I do.

20 Q On page 2, there was some
21 discussion earlier about a sentence which --
22 or part of a sentence which says, "We have

1 significant advertisers that want out of their
2 commitments based on weak distribution." I am
3 just curious, the word "out" is in quotes.
4 This is an e-mail from you going back to 2006.
5 Do you have any idea what the significance is,
6 if any, of the word "out" being in quotes?

7 A Yes. Knowing how I communicate, I
8 would have been telling Mr. Marques in kind of
9 a tongue-and-cheek way that we have got people
10 asking us and challenging us all the time to
11 prove our value, and that we have to continue
12 to do that.

13 So while he is fighting what
14 appears to be his daily grind of being able to
15 drive distribution, we have got the same thing
16 going on with advertisers. They call us up
17 constantly and ask us, where are you, how are
18 you doing, what have you created for me. So
19 I was kind of responding in a very jovial way
20 to him about what we would be doing with each
21 to work with our products.

22 Q So is there any significance to

1 the fact that the word "out" is in quotes?

2 A Other than that, no, because I
3 would have -- imagine that I would have listed
4 for him specifically if we had reasons with
5 certain clients, because then he would have
6 been able to understand that.

7 MR. SCHONMAN: Thank you. Your
8 Honor, if you would indulge me, my colleague,
9 Elizabeth Mumaw, would like to ask a question
10 or two.

11 JUDGE SIPPEL: Certainly.

12 BY MS. MUMAW:

13 Q I'm Elizabeth Mumaw, co-counsel
14 for the Bureau. You talk in your testimony
15 about the importance of the Nielsen ratings on
16 advertising sales. Can you explain to me what
17 the Nielsen ratings are a measure of?

18 A Yes. Nielsen ratings, in its
19 broadest sense, are a measure of the people
20 who are actually watching the television show.
21 And then, from there, they have different
22 subsets as to how they categorize them, and

1 each one of those can be broken up in a number
2 of different ways that advertisers look at.

3 The most common ones are
4 demographics -- how many folks between the
5 ages of 18 and 49 happen to be watching a
6 particular show.

7 Q And do you have any knowledge of
8 what the ratings were before and after the
9 tiering, how they were affected?

10 A I would have to go back and look
11 at those in a period of time to determine by
12 hour or program to how they perform.

13 Q Do you have any general knowledge?

14 A I would think that our ratings
15 were -- it is hard to generalize it, because
16 each program runs at a different hour, and
17 different schedules and different programs
18 come in there. But I would say that we would
19 have talked about those ratings being constant
20 with our advertisers. We would have tried to
21 put together packages of advertising to give
22 them the same ratings delivery that they would

1 have had in their previous contracts with us,
2 or developed ones for them the first time.

3 Q Okay. In 2004, would the NFL have
4 had a greater potential for advertising
5 revenue if it were on the expanded basic
6 rather than the D2?

7 A I really can't answer that. I
8 wasn't with the NFL in 2004. I joined in
9 2006.

10 Q You answered the question for 2000
11 and -- oh, no, he didn't.

12 MR. SCHONMAN: Just a minute.

13 MS. MUMAW: Nothing further.

14 MR. SCHONMAN: That is it, Your
15 Honor.

16 MS. MUMAW: Thank you.

17 JUDGE SIPPEL: Any further
18 redirect?

19 MR. SCHMIDT: Yes, please, Your
20 Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. SCHMIDT:

1 Q Mr. Furman, when you said -- do
2 you recall a few minutes ago talking about
3 advertising increasing after the tiering
4 period?

5 A Yes.

6 Q Do you believe, based on your
7 experience, it would have increased even
8 further had Comcast not undertaken this
9 tiering?

10 A I think I had been -- or tried to
11 be very clear that the larger our distribution
12 the better it is to be able to go out and
13 offer them to clients. And that is important,
14 and advertisers -- and excuse the -- bigger is
15 better for them. So they like bigger ratings,
16 they like bigger footprints and bigger
17 opportunities.

18 Q Do you have an understanding as to
19 whether the NFL Network is available by any
20 carrier in major media markets?

21 A Yes, it is. It is available --
22 DirecTV is available across the entire United